NATIONAL HEALTH LAW PROGRAM

Challenges for Women's Health in the Affordable Care Act

Susan Berke Fogel JD

Women and Health Care Reform
Los Angeles, CA
October 5, 2010

"Securing Health Rights for Those in Need"

NHeLP

- National non-profit law firm committed to improving healthcare access and quality for low-income individuals
- Offices in Washington D.C., Los Angeles, and North Carolina
- Comprehensive analysis of health care reform law was released in June 2010 – see website!
- Visit our website at: www.healthlaw.org

Overview

- Challenges for women's health in implementation of the Patient Protection and Affordable Care Act (PPACA)
  - Benefits: gaps in health care services
  - Access: the difference between coverage and access
  - Providers/Health Systems: sustaining Essential Community Providers

NHeLP
NATIONAL HEALTH LAW PROGRAM

What's Missing? Contraceptives

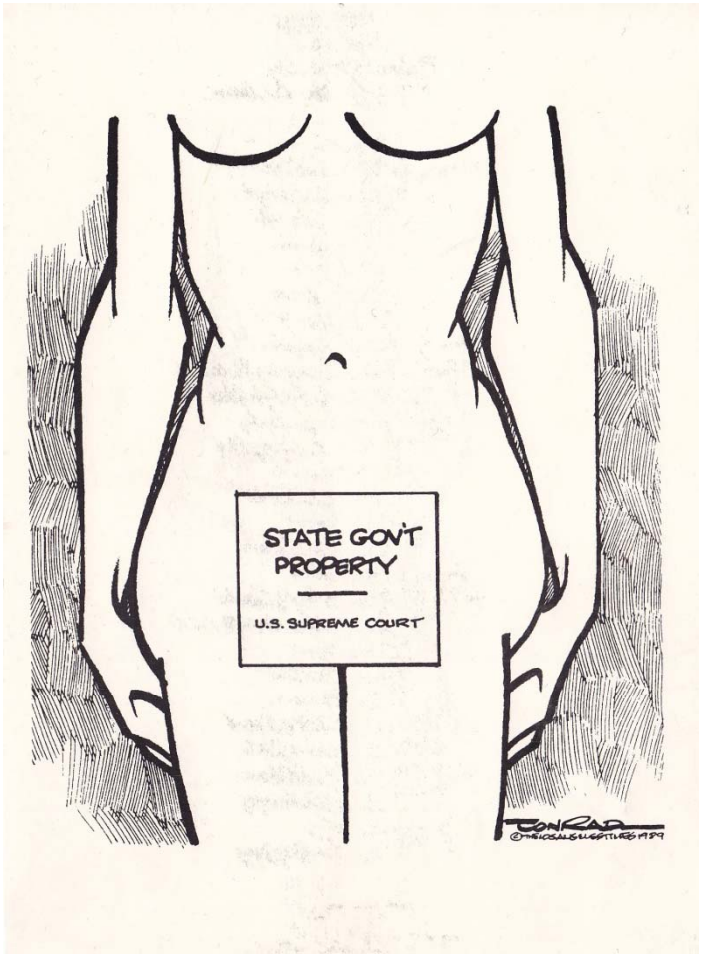
- Comprehensive contraceptive services, drugs and devices
  - Plans are required to cover certain preventive services without co-pay
    - Not contraceptives (yet)
    - Process:
      - USPSTF A & B recommendations without co-pay
      - IOM review
      - Delay, delay, delay: IOM report expected Aug 2011; plans have 1 year to implement (2012); new plans or renewals (2012-2013)

NHeLP
NATIONAL HEALTH LAW PROGRAM

What's missing?

- Comprehensive contraceptive services, drugs and devices
  - Medicaid mandatory services include "family planning services and supplies"
    - No federal definition
    - Still need Rx for OTC products
    - State flexibility in definition: FPACT is leader in comprehensive services
  - Family planning expansions: State Plan Amendment instead of waiver
    - Family planning services and supplies
    - "Diagnosis and treatment services"
    - Ease of process vs. loss of evaluation data

NHeLP
NATIONAL HEALTH LAW PROGRAM


STATE GOV'T
PROPERTY
U.S. SUPREME COURT

Abortion Access? Not so much

- Medicaid restrictions:
  - Hyde Amendment = no federal funding except for rape, incest, life endangerment
  - CA = state-funding for abortions
- Pre-Existing Condition Insurance Pools – PCIP
  - No abortion coverage
    - CA covers abortion in state-funded high risk pool; but not in new PCIP
    - Contrary to standards of care: Women with chronic diseases often most in need of contraceptives and abortion services

NHeLP
NATIONAL HEALTH LAW PROGRAM

Abortion Access: Importing bad policy into health exchanges

- Restrictions in the Exchange – Nelson Amendment
  - States can ban abortion outright
  - No "subsidy" funds can be used for abortion except for rape, incest, life endangerment
  - If plans cover abortion:
    - Every "enrollee" has to make 2 payments – one for regular coverage, one for abortion coverage
    - Plans must segregate funds; separate abortion payments from other payments; pay abortion claims out of segregated funds

NHeLP
NATIONAL HEALTH LAW PROGRAM

Abortion Access: Importing bad policy into health exchanges

- HHS to issue regulations
- Preliminary guidance leaves flexibility to State
  - Insurance Commissioner
  - Agency that regulates the exchange
- On-going opportunities to provide comment and input at state and federal level

NHeLP
NATIONAL HEALTH LAW PROGRAM

Coverage is not Access

Who will be left out?

NHeLP
NATIONAL HEALTH LAW PROGRAM

Access Barriers: more questions than answers

- Enrollment: systems reform
  - History of barriers erected to limit costs
  - For example 69% of uninsured children are eligible for the Medi-Cal or Healthy Families programs (CHCF)
- Citizenship documentation
  - Must prove citizenship/satisfactory immigration status
  - Oregon study: 33% decline in FP services; most impacted were teens
  - State can make less burdensome; lessons from Healthy Families and Medicaid

NHeLP
NATIONAL HEALTH LAW PROGRAM

Access Barriers: more questions than answers

Transitions between Medi-Cal and Exchange

- Fluctuations in income
- Pregnant women above 133% FPL
  - Prenatal care
  - Abortion services
- Confidentiality

Providers and health systems

- Including Essential Community Providers (ECP)
  - Community clinics (FQHC and others)
  - Title X and other family planning clinics
  - HIV clinics
- Implementation issues
  - Contracting
  - Comprehensive services
  - Recognizing ECPs as medical homes

NHeLP
NATIONAL HEALTH LAW PROGRAM

Cultural Competency Language Access

- Expanding need for providers
  - Cultural competence race, ethnicity, disability, gender, sexual orientation/gender identity, age
- Funding for language access
- Newly eligible populations in Medi-Cal
  - Single and/or childless men and women
  - Lesbians who are childless
  - Older women whose children are over age 18

NHeLP
NATIONAL HEALTH LAW PROGRAM

Refusal Clauses

- Refusal clauses are state or federal laws or regulations that protect medical providers from liability when they fail to provide expected services, typically for religious or moral reasons
- Refusal clauses lead to women being denied access to information or services, and ultimately result in women getting sub-standard medical care
- NHeLP's "Standards of Care Project" is devoted to ensuring that the right of a patient to receive proper care is not reduced by the personal beliefs of providers

NHeLP
NATIONAL HEALTH LAW PROGRAM

Refusal Clauses

- "Church Amendment" – attempt to balance patient health needs and provider refusals
  - Provider cannot be discriminated against for either refusing or providing abortion/sterilization
- Refusals in exchange
  - Provider cannot be discriminated against for refusing
- HHS regulations still in effect
  - Broad refusal for wide range of workers and volunteers

NHeLP
NATIONAL HEALTH LAW PROGRAM

NHeLP
NATIONAL HEALTH LAW PROGRAM

Moving Forward

- Comment
  - Proposed regulations
- Participate
  - HHS grants for consumer participation
  - Input to state exchange
- Talk
  - make women's reproductive health needs visible

NHeLP
NATIONAL HEALTH LAW PROGRAM

NHeLP

www.healthlaw.org

LA Office: 310-204-6010